



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 28 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Nebraska Service Center (Director). The Director subsequently revoked the approval of the petition. The revocation decision is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed.

The petitioner must appeal a decision to revoke the approval of a petition within 15 days of service. *See* 8 C.F.R. § 205.2(d). If the unfavorable decision was mailed, the appeal must be filed within 18 days of service. *See* 8 C.F.R. § 103.8(b). An untimely appeal must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date of an appeal is the date of receipt at the location designated for filing. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal must be signed and submitted with the correct fee. *Id.*

The Director revoked the approval of the petition on February 11, 2013. The Director's Notice of Revocation properly instructed the petitioner that it had 18 days to file an appeal or motion. Thus, an appeal or motion was due by Friday, March 1, 2013. The instant appeal was received by the Director on Monday, March 4, 2013, as evidenced by the mailing label, the tracking information for the package, and the Nebraska Service Center receipt stamp. Thus, the appeal was filed 21 days after the date of the decision. Accordingly, it is untimely.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). As required by 8 C.F.R. § 103.3(a)(2)(ii)-(iv), the Director reviewed the appeal prior to forwarding it to the AAO, and did not conclude that it met the requirements of a motion or otherwise warrant favorable action.¹

In accordance with 8 C.F.R. § 103.3(a)(2)(v)(B)(1), the untimely appeal must be rejected.

ORDER: The appeal is rejected.

¹ It is also noted that the petitioner did not submit any brief or additional evidence in support of the appeal, despite counsel's statement on the Form I-290B that "adequate evidence" would be submitted within 30 days.